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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,220	10/28/2003	William R. Raap	07184-00049	4948

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DOWNS RACHLIN MARTIN PLLC
199 MAIN STREET
P O BOX 190
BURLINGTON, VT 05402-0190

EXAMINER	
NGUYEN, SON T	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,220	RAAP ET AL.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 April 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18,20-27,33 and 34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18,20-27,33 and 34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,33,34** are rejected under 35 U.S.C. 102(b) as being anticipated by Young (1689418).

For claim 1, Young teaches a device comprising a container having an exterior including a bottom wall and a sidewall extending upward from the bottom wall and defining an opening; and a rodent deterrent (12) secured to at least a portion of the exterior of the container.

For claim 33, Young teaches wherein the rodent deterrent is distributed over substantially all of the exterior (see figs.).

For claim 34, Young teaches the rodent deterrent is a particulate (line 31).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1,5-8,11,14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (as above) in view of Young (as above).

For claims 1 &14, Fernando et al. teach a device comprising a container having an exterior including a bottom wall (1b) and a sidewall (1a) extending upward from the bottom wall and defining an opening. However, Fernando et al. are silent about a rodent deterrent on the exterior wall. As discussed in the above claim 1, Young teaches a rodent deterrent on the exterior wall of their container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a rodent deterrent as taught by Young on the exterior of the container of Fernando et al. in order to, not only deterred rodent, but to create an aesthetically pleasing in appearance container (lines 4-6).

For claims 5-8, Fernando et al. as modified by Young (emphasis on Fernando) further teach the bottom and side walls each comprise elongate biodegradable fibers (see abstract of Fernando, fibers are coir fibers). The fibers are bonded together by latex rubber (see abstract).

For claim 11, Fernando et al. as modified by Young (emphasis on Fernando) further teach the bottom wall (1b) having apertures (3) for roots to grow therethrough.

5. **Claims 2,3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (as above) in view of Kawaguchi et al. (5675933).

Young is silent about a grid closure. Kawaguchi et al. teach a plant container with a grid cover (43) to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a grid cover as taught by Kawaguchi et al. in the assembly of Young in order to protect the plants growing therein.

6. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Young (as above).

Young teaches the deterrent being small particles (line 31 but is silent about the particles being seashell fragments. It is notoriously well know in the plant container industry that various decorative material such as seashell is employed to, not only deterred, but to make the container more pleasing in appearance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ seashell fragments as the preferred particles for the container of Young, since seashell fragments are notoriously well known to be used on plant container for a more aesthetically pleasing plant container.

7. **Claims 9-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Young as applied to claim 1 above, and further in view of Okii et al. (as above).

Fernando et al. as modified by Young are silent about a growth enhancer. Okii et al. teach a growth enhancer (such as a fungus) for accelerating growth in plants. The enhancer is released in the soil for the plants to absorb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by Okii et al. in the assembly of Fernando et al. as modified by Young in order to accelerate the plants' growth. Since it is a container system, the enhance is released from/within the container.

8. **Claims 12,15-17,24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (DE019907577C1).

For claims 12,15-17, Fernando et al. teach a system for plants comprising a container having a preformed free-standing walls (1a) and a bottom wall (1b), both walls comprising biodegradable fibers (such as coir fibers) bonded together by latex rubber, the bottom wall includes openings (3); a second soil contained within the cavity (inherent since it is a planting pot which plant lives in soil). However, Fernando et al. do not specifically state bulbs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ bulbs in the container of Fernando et al., depending on the user's preference to grow bulbs or seeds or the like. Fernando's container is designed for germination and planting so one can have a choice to grow whatever desired in the container of Fernando.

For claim 24, Fernando et al. teach a method of planting comprising the step of providing the container as discussed in claim 12. Since the container of Fernando is biodegradable, one could assume it is for planting in the ground so that, eventually, the fibers will degrade and thus, making the container environmentally friendly. However, only an abstract is obtained for translation, it is hard to tell if Fernando's container is intended to be buried in the ground or soil. In any event, it is notoriously well known in the planting industry that containers, be it biodegradable or not, are buried in the soil or ground. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of planting the assembly in a second soil in the method of Fernando et al., for such step is notoriously well known in the art and also, it is believe that this is the intention of Fernando's container since the container is biodegradable.

9. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (as above) in view of Kawaguchi et al. (as above).

Fernando et al. are silent about a closure. Kawaguchi et al. teach a plant container with a grid cover (43) to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a grid cover as taught by Kawaguchi et al. in the assembly of Fernando et al. in order to protect the plants growing therein.

10. **Claims 25,26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (as above) in view of Kawaguchi et al. (as above).

For claims 25 & 26, Fernando et al. are silent about deterring a rodent from accessing the cavity. Kawaguchi et al. teach a plant container with a grid cover (43) to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of deterring a rodent by using a grid cover as taught by Kawaguchi et al. in the method of Fernando et al. in order to protect the plants growing therein.

11. **Claims 18,20,22,27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (as above) in view of Okii et al. (4945059).

For claim 18, Fernando et al. are silent about a growth enhancer. Okii et al. teach a growth enhancer (such as a fungus) for accelerating growth in plants. The enhancer is released in the soil for the plants to absorb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by Okii et al. in the assembly of Fernando et al. in order to accelerate the

plants' growth. Since it is a container system, the enhance is released from/within the container.

For claim 20, Fernando et al. teach the container system as described above and Okii et al. teach the enhancer as discussed in claim 18; therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by Okii et al. in the assembly of Fernando et al. in order to accelerate the plants' growth. Since it is a container system, the enhance is released from/within the container.

For claim 22, see claim 18.

For claim 27, Fernando et al. are silent about releasing growth enhancer. Okii et al. teach a growth enhancer for accelerating growth in plants. The enhancer is released in the soil for the plants to absorb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of releasing growth enhancer as taught by Okii et al. in the method of Fernando et al. in order to accelerate the plants' growth. Since it is a container system, the enhance is released from/within the container.

12. **Claim 21** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Okii et al. as applied to claim 20 above, and further in view of Iwasaki et al. (4844734).

Fernando et al. as modified by Okii et al. are silent about the enhancer being ground-up seashells. Iwasaki et al. teach growth enhance comprising seashell powder (which is ground up seashells). It would have been obvious to one having ordinary skill

in the art at the time the invention was made to employ seashell powder as taught by Iwasaki et al. as the preferred growth enhancer of Fernando et al. as modified by Okii et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

13. **Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Okii et al. as applied to claim 20 above, and further in view of Kawaguchi et al. (as above).

Fernando et al. as modified by Okii et al. are silent about a closure. Kawaguchi et al. teach a plant container with a grid cover (43) to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a grid cover as taught by Kawaguchi et al. to cover the container of Fernando et al. as modified by Okii et al. in order to protect the plants growing therein.

Response to Arguments

14. Applicant's arguments with respect to claims 1-18,20-27 have been considered but are moot in view of the new ground(s) of rejection.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Son T. Nguyen
Primary Examiner
Art Unit 3643

stn